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In The

Supreme Court of the United States

October Term, 1980

HAVENS REALTY CORPORATION and
ROSE JONES,

Petitioners,

vs.

SYLVIA COLEMAN, R. KENT WILLIS and
HOUSING OPPORTUNITIES MADE EQUAL,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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HEIGHTS COMMUNITY CONGRESS v. HILLTOP REALTY, INC., No. C79-422 (N.D. Ohio, December 31, 1980) DEMONSTRATES THE IMPORTANCE OF PROMPT RESOLUTION OF TWO QUESTIONS PRESENTED IN THE CASE AT BAR.

On December 31, 1980, the United States District Court for the Northern District of Ohio issued a memorandum opinion and order in *Heights Community Congress* v. *Hilltop Realty, Inc.*, No. C79-422 (N.D. Ohio, December 31, 1980) (hereafter *Hilltop Realty*), which was not available to counsel for petitioners when the petition for certiorari was filed.* In *Hilltop Realty*, as in the case at bar, various plaintiffs sought injunctive relief and monetary damages

*The Memorandum and Order is reprinted in its entirety in the Appendix.

against a real estate firm and its agents, charging them with racial steering. Defendants moved for summary judgment, contending that there were no genuine issues of material fact with respect to the plaintiffs' standing. The district court's order granting in part and denying in part the defendants' motion demonstrates the importance of resolving two important issues in the case at bar: (1) the nature of the allegations a plaintiff must make to base standing under the Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.* (hereafter Fair Housing Act), on deprivation of the benefits of interracial association, and (2) the basis for organizational standing under the Fair Housing Act.

Allegations Necessary to Confer Standing on an Individual Plaintiff

In determining whether each of the individual plaintiffs had standing under the Fair Housing Act, the district court relied on this Court's opinion in *Gladstone, Realtors* v. *Village of Bellwood,* 441 U.S. 91 (1979) (hereafter *Bellwood II*). The court correctly held that in order for a plaintiff to base standing on a deprivation of the benefits of interracial association, he or she must be a resident of the targeted neighborhood (App. 20). Referring to footnote 25 of this Court's opinion in *Bellwood II,* 441 U.S. at 111 n.25, the district court stated:

> [I]t seems unlikely that summary judgment as to Perry would have been sustained if the Court believed that actual harm attached to Perry because of his residence in Bellwood, derived vicariously from the harm allegedly "done to the residents of the carefully described neighborhood in Bellwood in which four of the individual respondents reside[d]." Thus, residence in Bellwood, without residence in the target neighborhood, was not enough to create a claim of deprivation of the "social and professional benefits of living in an integrated society."

> In passing on the standing of each of the individual plaintiffs, the critical factor, therefore, will be whether the plaintiff is living in a neighborhood that is becoming a "predominantly Negro community." The absence of residence in such a community will deny the particular plaintiff the right to claim "the loss of social and professional benefits."

(App. 20). Thus, in the context of the facts alleged in *Hilltop Realty*, the court denied standing to individuals whose specific neighborhoods did not show the impact of the resegregation effect claimed to have been the result of defendants' steering. This result is in direct conflict with the Fourth Circuit's ruling in the case at bar where the individual plaintiffs were found to have standing even though they only alleged residence in the City of Richmond or Henrico County and alleged no credible facts connecting defendants' alleged steering with the neighborhood in which they reside.

More importantly, *Hilltop Realty* demonstrates the critical nature of the questions presented in the case at bar. This court's decisions in *Bellwood II* and *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972) have made clear that standing may be based on allegations that a plaintiff has been deprived of the benefits of interracial association. The Fourth Circuit's opinion in the case at bar suggests that *any* plaintiff who makes this conclusory allegation, no matter how incredible, and in the absence of any specific allegations linking the acts complained of and the injury, has standing. *Hilltop Realty* correctly limits standing to those plaintiffs alleging a credible link between their own neighborhoods and defendants' alleged discrimination. The lower courts require guidance on this important question.

Allegations Necessary to Confer Standing on an Organizational Plaintiff

Furthermore, in *Hilltop Realty*, a housing organization, Heights Community Congress, sought standing in its own right, alleging that it had been injured by defendants' alleged racial steering because it had "expended funds for the purpose of promoting and maintaining an open and integrated community" (App. 27). Recognizing the conflict between the Fourth Circuit's decision in the case at bar and the Seventh Circuit's decision in *Village of Bellwood* v. *Gladstone Realtors*, 569 F.2d 1013 (7th Cir. 1978), *aff'd on other grounds, Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979) (hereafter *Bellwood I*) (App. 31), the district court specifically declined to follow *Bellwood I* in holding that Heights Community Congress had standing. Instead, the district court followed the Fourth Circuit's decision in the case at bar. Interestingly, although the district court recognized that "voluntary expenditures of time and energy, even personal funds, to advance these causes, however worthy, 'constitutes an abstract injury, not judicially cognizable in the assessment of [an individual] plaintiff's standing,'" (App. 25), the court affirmed the organization's standing based on just such an "injury." While attempting to distinguish *Bellwood I*, the court's opinion actually conflicts with it.

Lower courts should not be forced to guess which of two conflicting circuit court decisions should be followed on so crucial an issue as the standing of organizations to sue under the Fair Housing Act. As evidenced by *Hilltop Realty*, the question is a recurring one which must be resolved promptly.

CONCLUSION

In conclusion, *Hilltop Realty* demonstrates that the important and recurring questions raised in the case at bar need to be resolved now to provide guidance to courts and litigants as to the scope of standing under the Fair Housing Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that six (6) copies of the foregoing Supplement to Petition for Writ of Certiorari with Appendix have been served by mail on counsel for respondents, addressed as follows: three (3) copies to Daniel M. Singer, Theodore C. Hirt, Vanessa Ruiz and Dennis J. Riley, Fried, Frank, Harris, Shriver & Kampelman, 600 New Hampshire Avenue, N.W., Suite 1000, Washington, D.C. 20037, and three (3) copies to James F. Stutts, McSweeney, Stutts & Burtch, 121 Shockoe Slip, Richmond, Virginia 23219.

APPENDIX

App. 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

C79-422

HEIGHTS COMMUNITY CONGRESS, et al.
Plaintiffs,

v.

HILLTOP REALTY, INC., et al.
Defendants.

Filed December 31, 1960, 3:39 P.M. in the United States District Court, Northern District of Ohio, Eastern Division

MEMORANDUM AND ORDER

THOMAS, J.

Asserting jurisdiction under 42 U.S.C. §§ 3612 and 3617 and claiming violations of sections 3604 and 3617, the Thirteenth Amendment, and 42 U.S.C. § 1982, plaintiff Heights Community Congress (HCC, "a community organization"), plaintiff City of Cleveland Heights ("a municipality"), and six individual plaintiffs ("black and white citizens"), seek injunctive relief and money damages against defendant Hilltop Realty, Inc. ("a real estate firm") and individual defendants (Hilltop's "agents"). Plaintiffs charge the defendants with

> racial steering and other racially discriminatory housing practices which otherwise make unavailable, deny and interfere with equal housing and educational opportunities.

Defendants move this court for summary judgment. Contending that "there are no genuine issues of material fact with respect to the issue of standing of the plaintiffs," defendants say they are entitled to judgment as a matter of law.

While the presence of the merits issue of motive and intent of defendants would militate against granting a summary judgment in a fair housing case, defendants correctly argue that "no such issues are involved in a motion directed toward the standing of plaintiffs." Disputing a contrary contention of the plaintiffs, defendants properly note that deposition testimony may be considered in a summary judgment ruling. Also, other discovery materials may be considered. Extensive discovery (interrogatories, depositions, production of documents) has been used in this case. These materials, but particularly the depositions and attached exhibits, have been examined in ruling upon defendants' "standing" motion. Pertinent is the Court's instruction in *Gladstone Realtors* v. *Village of Bellwood*, 441 U.S. 90 [sic], 109 n.22 (1979) (hereafter *Bellwood II*), that the trial court should "accept as true the facts contained in . . . discovery materials for the purposes of the standing issue." Thus the record goes beyond the "material allegations of the complaint" which, of course, must be construed "in favor of the complaining party." *Warth* v. *Seldin*, 422 U.S. 490, 501 (1975).

I.

In *Warth* v. *Seldin*, *supra*, at 498, and approved in *Bellwood II*, *supra*, at 99, the Court defines the essence of the standing question as "whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." In the dimension of the "constitutional limitations

on federal-court jurisdiction," and in the dimension of "prudential limitations on its exercise," the principle of standing is "founded in concern about the proper—and properly limited—role of the courts in a democratic society."

To satisfy Article III, the Court has variously articulated the Article's mandate. It is enough here to note the Court's Article III requirement that "the plaintiff must show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant." *Bellwood II, supra,* at 99.

Prudential limitations, which are court imposed ones, have taken two forms. First, the federal courts will not assume jurisdiction where the injury claimed is a generalized one, "shared in substantially equal measure by all or a large class of citizens. . . ." Second, jurisdiction is not to be assumed when the plaintiff is asserting the rights of third persons rather than the plaintiff's own rights (citations). *Warth* v. *Seldin, supra,* at 499; *accord, Bellwood II, supra,* at 100.

Bellwood II reiterates:

> Congress may, by legislation, expand standing to the full extent permitted by Art. III, thus permitting litigation by one "who otherwise would be barred by prudential standing rules." *Warth* v. *Seldin, supra,* at 501.

Bellwood, supra, at 100. Congress may not "abrogate the Art. III minima: A plaintiff must always have suffered 'a distinct and palpable injury to himself'." *Id.*

It becomes necessary then to consider the specific legislation involved herein, Title VIII of the Civil Rights Act of 1968, 82 Stat. 81, as amended, 42 U.S.C. § 3601, *et.* [sic] *seq. Trafficante* v. *Metropolitan Life Insurance,* 409 U.S. 205 (1972), involved an action brought under section 810,

42 U.S.C. § 3610, which permits actions to be brought under section 810(d) by a "person aggrieved," defined in section 810(a) as "any person who claims to have been injured by a discriminatory housing practice." "With respect to suits brought under the 1968 Act . . . insofar as tenants of the same housing unit that is charged with discrimination are concerned," the Court concluded that there is "congressional intention to define standing as broadly as is permitted by Article III of the Constitution." *Id.*, at 289. This language was adopted from *Hackett* v. *McGuire Bros. Inc.*, 445 F.2d 442, 446 (3rd Cir. 1971), a suit brought under the Civil Rights Act of 1964.

In *Bellwood II*, 441 U.S. at 109, the Court rejected the argument that in section 812, 42 U.S.C. 3612, standing was limited to "direct victims of the conduct proscribed by Title VIII." The Court concluded:

> Standing under § 812, like that under § 810, is "as broa[d] as is permitted by Article III of the Constitution." *Trafficante*, 409 U.S. at 209.

In other words, prudential limitations on standing are erased under section 812 as well as under section 810. Only standing under Article III need be satisfied.

II.

Defendants argue that plaintiff Cleveland Heights lacks standing "because it is not a 'private person' within the terms of section 812, 42 U.S.C. § 3612." Captioned "Enforcement by Private Persons," section 3612 in part provides:

> (a) The rights granted by sections 3603, 3604, 3605, and 3606 of this title may be enforced by civil actions

> in appropriate United States District Courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction.[1]

One might suppose that the Court's decision that the Village of Bellwood had standing to bring a civil action under section 812 approved the premise that the Village of Bellwood, although a municipal corporation, was nonetheless entitled to bring a section 812 civil action. However, the Court concluded that "the question whether Bellwood is a 'private person' entitled to sue under section 812 is not properly before us, and we express no views on it." *Bellwood II, supra,* at 109 n.21.

Acknowledging that the "text of (a) is silent as to who may enforce such rights," defendants contend that "the caption of section 3612 clearly limits enforcement of section 3612 to private persons."

The "title" to a legislative act may be utilized as a tool of statutory construction but only when the title does not "limit the plain meaning of the text" and when "it may be

---

[1] Of the four designated sections, only section 3604 is here pertinent. Charging "racial steering and other racially discriminatory housing practices," plaintiffs allege that these activities "otherwise make unavailable, deny. . . equal housing. . . opportunities." Patently, plaintiffs rely on section 3604(a), which makes it unlawful to "otherwise make unavailable or deny, a dwelling to any person because of race, color."

Applying the "make unavailable or deny" language, the court in *United States* v. *Mitchell,* 580 F.2d 789, 791 (5th Cir. 1978) declared, "Steering blacks to a particular group of apartments in a complex effectively denies access to equal housing opportunities." Significantly, the court stressed the indirect scope of the language:

> The Fair Housing Act prohibits not only direct discrimination but practices with racially discouraging effects; steering evidences an intent to influence the choice of the renter on an impermissible racial basis. *Zuch* v. *Hussey,* 394 F.Supp. 1028 (E.D. Mich. 1975), *aff'd,* 547 F.2d 1168 (6th Cir. 1977).

Racial steering, it is concluded, is rendered unlawful by the "make unavailable or deny language" of section 3604(a).

of aid in resolving an ambiguity." *McGuire* v. *Commissioner*, 313 U.S. 1, 9 (1941).

Section 812(a) says that the "rights granted by sections . . . of this title may be enforced by civil actions." Section 812(a) does not specify who are the parties who may file those actions. Sections 812(b) and (c) use the word "plaintiff" several times. Thus, authority is granted a court of the United States to "appoint an attorney for the plaintiff" and to "award to the plaintiff actual damages." Nowhere do sections 812(b) and (c) modify the term "plaintiff." Since the text of section 812 plainly does not restrict who may be a party plaintiff, it cannot be said that an ambiguity is present. Hence, the section title "Enforcement by Private Persons" may not be employed to so limit the class of party-plaintiffs who may bring civil actions under section 812.

Focusing on the words "private persons" as used in the caption, the question is what is the intended scope of the word "persons"? In *Village of Bellwood* v. *Gladstone Realtors*, 569 F.2d 1013, 1020, n.8 (7th Cir. 1978) (hereafter *Bellwood I*), the court of appeals declared that "42 U.S.C. § 3602(d) does not limit 'person' to natural persons, but sets out a broad range of organizations, including 'corporations,' within the definition." Continuing, the court said: "The Village is a municipal corporation, and we see no reason, or at least defendants have shown none, to construe section 3602(d) to exclude that type of corporation." Since a corporation, and therefore a municipal corporation, is within the Act's definition of the word "person," Congress, by adding "private" as a modifier of "persons" in the caption, surely did not thereby intend to drain the word "persons" of its definitional substance. Yet, that would be the result if the modifier "private" is read as a preclusive congressional signal that only a private natural person (not even a public figure) may bring a civil action under section

812. A more reasonable construction of the section 812 caption is that without intending to restrict use of the section to private natural persons, Congress contemplated that section 812's direct access to the United States district courts to enforce the fair housing rights created by the four sections designated in section 812(a) would be availed of principally by private individuals. Thus in captioning section 812, "Enforcement by Private Persons," actions under section 812 usually would be brought by private persons acting as "private attorneys general." [2] Congress differentiated section 813 from section 812, captioning the section "Enforcement by the Attorney General" and authorizing section 813 "pattern and practice" suits by the public Attorney General.

III.

A.

Defendants assert that "the city fails to satisfy the constitutional standing requirements established in *Bellwood*."

---

[2] In *Trafficante*, in which a private action was brought under section 810(d), Justice Douglas recognized that:

> Since HUD has no enforcement powers and since the enormity of the task of assuring fair housing makes the role of the attorney general in the matter minimal, *the main generating force must be private suits* in which, the Soliciter General says, the complainants act not only on their own behalf but also as *"private attorneys general"* in vindicating a policy that Congress considered to be of the highest priority. The role of "private attorneys general" is not uncommon in modern legislative programs.

409 U.S. at 211 (emphasis added).

Under Title VIII, "private attorneys general," bringing actions under section 812(a) or section 810(d), do provide "the main generating force" in combatting "the enormity of the task of assuring fair housing." But the text of neither section 810 nor section 812 discloses any congressional intent to forbid a corporation, private or public, from bringing an action under either section to "vindicat[e] a policy that Congress considered to be of the highest priority."

Measured by these requirements, articulated in part II, A, defendants' arguments will be considered in light of the complaint and the supplementing discovery record.

In *Bellwood II, supra,* at 109-10, the Court stated that "[t]he gist of Bellwood's complaint is that petitioners' racial steering effectively manipulates the housing market in the described area of the village" and that "this conduct is affecting the village's racial composition, replacing what is presently an integrated neighborhood with a segregated one." The allegations of the present complaint are similar. The first paragraph of the complaint charges the defendants with "racial steering." Paragraph 5 alleges that

> [p]laintiff city seeks to continue to be a well-maintained, stable, integrated community without resegregation in any part thereof for the benefit of its residents and all those that choose to live therein.

At another point, paragraph 5 states that

> [t]o ascertain compliance with federal, state and local fair housing laws, the city has for several years, monitored real estate practices by auditing the defendant broker and its sales agents as well as other real estate firms operating in the city.

Discovery has established that the city contracted with the Heights Community Congress to conduct such an audit in spring of 1978. Paragraph 16 of the complaint alleges that the monitoring of the activities of the defendants revealed

> a pattern and practice of racially discriminatory housing practices by the defendants including locational steering by race, racial remarks, racial disparity and financing, racial differentiation and treatment and racially inconsistent advertising.

In paragraph 14 the complaint alleges that

> [n]otwithstanding the decree [the 1973 decree "requiring specific affirmative fair housing activity"], defendants and their agents engaged in racially discriminatory housing practices which contributed to the erosion, interference and obstruction of integrated housing opportunities by the defendants' failure to abide by their affirmative fair housing duties.

The complaint further alleges in paragraph 24:

> Remaining plaintiffs reside in neighborhoods which they seek to maintain as racially balanced and integrated. As a result of the acts and conduct of the defendants, persons who would otherwise be residing in Cleveland Heights have been steered, induced or otherwise kept away from their respective neighborhoods and accordingly the economic, professional and social benefits have been denied.

In *Bellwood* it was alleged that racial steering of the realty firms affected the village's racial composition "replacing what is presently an integrated neighborhood with a segregated one." Construed most favorably for the plaintiffs, their complaint is deemed to contain allegations substantially similar to the *Bellwood* allegations. The present complaint asserts that "locational steering by race" and other practices of defendant Hilltop and its defendant agents have "contributed to the erosion, interference and obstruction of integrated housing opportunities" in Cleveland Heights.

However, on the basis of discovery, defendants seek to distinguish *Bellwood*'s facts from the facts of the present case. They say that "a particular residential area within Bellwood was the alleged target—not an entire city," while

here "the entire city of Cleveland Heights is the subject of plaintiffs' claims." Defendants then say that

> [a]ll the discovery taken to date shows that the City of Cleveland Heights is an open and integrated community which, in contrast to the target area in Bellwood, is in no way becoming a "predominently Negro" community. *Gladstone, Realtors* v. *Bellwood, supra.* The black population of Cleveland Heights is only 23 percent (answer 13 to Interrogatories Propounded to the City).

Attached to defendants' brief is a November 1979 Cuyahoga Plan Report on population and race estimated by census tracts. Offered to show that the "rate of increase of the black population of the city has slowed in recent years," the report reveals that the population of Cleveland Heights was three percent non-white at the time of the 1970 census. Estimates of non-white population are 8 percent (1973), 19 percent (1976), 21 percent (1977), and 23 percent (1978).[8]

The 23 percent, an average, is deceptive. It conceals substantially higher non-white percentages in certain areas of the city. The Cuyahoga Plan Cleveland Heights census tract estimates for the year 1978 vary from one tract that is seven percent to one that is 48 percent. Four census tracts show non-white percentages of 32, 36, 38, and 39.

The school population racial composition has a wider range. The minority report for January 26, 1979 Cleveland Heights—University Heights City School District discloses minority percentages (rounded numbers) ranging from a low of 19 percent in Roxboro Elementary School to 69 per-

[8] Ms. Barbara Roderick, employed in different housing capacities for Cleveland Heights beginning in 1970, was commissioner of real estate programs when she resigned on November 1, 1979. In her deposition of February 19, 1980, Ms. Roderick testified that the percentage of minorities is "over 25% at this point."

cent in Millikin and 76 percent in Boulevard. These figures show that while Cleveland Heights is an "integrated community" as defense counsel states, there is a genuine issue of fact as to defense counsel's further statement that Cleveland Heights (i.e., some city neighborhoods) "is in no way becoming a 'predominantly Negro' community." Also, the city's "openness," in the sense of an absence of unfair housing real estate practices, is a disputed issue in this case.

Defendant calls attention to testimony of Lana Cowell, executive director of the Heights Community Congress concerning a newspaper story of June 14, 1979. The story referred to a 1978 new homeowner questionnaire ("73 percent of those homeowners surveyed were white and 23 percent were black"). The article quoted Ms. Cowell as saying that this distribution represents stability. She was asked if this was accurate. She answered, "That's what I said." Defendants also refer to a promotional piece of the HCC and a statement that the evolution of Cleveland Heights "from an all-white suburban community to an integrated community, which provides a variety of cultural heritages, has been most unique and successful." Defendants then go on to conclude:

> Given the fact that Cleveland Heights is a well-integrated, stable community, it is difficult to see how the city can be said to have suffered any injury comparable to that alleged by the village in Bellwood.

Defendants' characterization of defendant Cleveland Heights as "a well-integrated, stable community" omits reference to discovery testimony which makes an issue of a stable racial balance in some areas of Cleveland Heights. City Manager Richard V. Robinson was asked if the Cuyahoga Plan estimate of 23 percent blacks was injurious to the city. He answered:

> Do I think, per se, as a piece of statistical information, no. As it relates to housing patterns and locations, yes. Concentrations exist.

Further asked if he thought these concentrations are desirable for the city, he answered, "no," explaining:

> They show an apparent locational steering which was validated through audits, in that people were shown certain areas of the city and not others because there appeared to be no free market choice as to where they could buy homes.
>
> We have not seen this with homes of comparable size and comparable price. We have not seen this type of pattern or residency taken up in other eastern suburbs such as Lyndhurst, South Euclid, which are contiguous.

In related testimony he noted, "There is a psychological effect that has been recognized by the courts called the tipping point." He explained the problem of the heavy concentrations of black population:

> It is a combination of both the reaction of the residents living there and the reaction of individuals that might be looking for housing there. I don't know if you have followed, or the real estate industry has, to look at any statistics of white sales of homes that has occurred in East Cleveland [adjoining Cleveland Heights on the north] within the last few years, but there is a perception that it is an all-black community,[4] and therefore there are not white move-ins into the community.

Ms. Roderick, former commissioner of the city's real estate programs, indicated there are "smaller neighborhoods

[4] The Cuyahoga Plan report estimates the percentage of non-white population in East Cleveland as 82 percent, ranging from a low of 60 percent in one census tract to a high of 100 percent in another census tract with intermediate percentages in the remaining census tracts.

within census tracts that are probably predominantly [more than 50 percent] black." She was then asked whether she was saying that the so-called injury to the city affects more than those neighborhoods. She answered, "Yes, it has an effect on people moving into any part of Cleveland Heights." Explaining, she stated:

> I think white families for the most part are not looking for a community that is already 50 percent black. If they are talking about integration, they are talking about something that for the majority of white families is more comfortable, perhaps 10 or 20 percent, which would again reflect the county percentage of minority families, [while] ours is more integrated than the county average.

The discovery record, here highlighted, shows that despite the integrated character of Cleveland Heights as reflected in the Cuyahoga Plan's November 1979 estimate of the overall population being 23 percent non-white, several census tract areas have considerably higher non-white populations; in at least one, the non-white population is approaching 50 percent. Moreover, several elementary school districts in these sub-areas of the city are now predominently non-white. Quoted testimony tends to show that locational steering by race is pushing these neighborhoods away from integration and towards segregation. Thus as to these target areas, as in *Bellwood*, the plaintiffs allege that defendants' "conduct is affecting the [city's] racial composition, replacing what [are] presently . . . integrated neighborhood[s] with . . . segregated one[s]."

In *Bellwood II*, the Court stated, "A significant reduction in property values directly injures a municipality by diminishing its tax base, thus threatening its ability to bear the cost of local government and to provide services." *Id.*, at

110-11. While no allegation is made in the complaint that real estate tax values have diminished in Cleveland Heights, both Ms. Roderick and Mr. Robinson were interrogated by defendants' counsel on this subject. It is the opinion of Ms. Roderick that illegal real estate practices "and in particular, the alleged actions of Hilltop Realty," have affected the real estate tax base of Cleveland Heights. Asked how she knew that, she answered:

> The steering and other discriminatory acts that lead towards resegregation diminsh the demand for housing.

Ms. Roderick also observed that "in the last assessment, our commercial properties decreased more than those in most other communities." Resegregation, in her mind, was one of the factors in this decrease.

Mr. Robinson was referred to a Cleveland Heights block fund grant application (not an exhibit) which apparently indicates estimated change in Cleveland Heights property values from 1976 to 1979 of 44.7 percent, with only Shaker Heights listed as having a higher increase. Significantly, following the reference to the increases in values, this exchange occurred:

> Now, you contended that the rise in values in Cleveland Heights has not kept up with other surrounding communities, and is it your position that that is due to some actions by realtors or the real estate industry?
>
> A. In part, yes.
>
> Q. How or why:
>
> A. The locational steering and the unfair sales practices and the concentrations of minorities in particular areas as a result of the housing sale process has generated what I consider professionally to be adverse

> effects on the appraised values of homes in Cleveland Heights.

At another point, Mr. Robinson testified that the law department had "recommended" to him "that locational steering had in fact occurred and by Hilltop Realty." Mr. Robinson's testimony is sufficient to attribute to realtors locational steering (a violation of section 3604, see n.1, *supra*) which produced "concentrations of minorities in particular areas," with a resulting "generat[ion]" of "adverse effects on the appraised values of homes in Cleveland Heights." [5]

Therefore, at this stage of the case, the complaint and supplementing evidence, given the most favorable construction, are sufficient to show that locational steering by race, a violation of section 3604, has been committed by defendant Hilltop and its agents and that this has caused, or is likely to cause, economic injury to Cleveland Heights. Standing on the part of Cleveland Heights to bring this action is thus established.

B.

The discovery factual record shows that Cleveland Heights has suffered a further distinct and palpable injury by reason of the practices of the defendants. Asked what is the economic injury that Cleveland Heights has suffered by reason of discriminatory real estate practices of the defendants, Ms. Roderick answered:

> The city has expended significant numbers of dollars in an attempt to overcome or compensate for what we

[5] This last opinion, corroborated by Ms. Roderick's testimony, is probative at this stage of the case although it appears to conflict with the Cleveland Heights property value increase rate asserted in the block grant application. See text at p. 16.

> believe to be illegal real estate practices in terms of dealing with the anxiety that it creates for residents, in having to develop our own program of promotion, and having to spend many years in educating the industry and trying to conciliate with the industry to improve real estate practices. That's one of the economic injuries.[6]

As early as 1973, the city, working separately, but in conjunction with the Heights Community Congress, staffed, and thus expended funds for different programs to achieve and maintain open (fair) housing in the city. First as the Community Relations Office, then in 1974 as the Heights Housing Service, the office had grown to 11 staff members in 1977. It is coordinated under the commissioner for real estate programs. It has sought to assist the real estate industry in being able to continue to attract white families to the community through the promotional advertising of the city.

Escort services of the Housing Service assist sellers, as

[6] Funds used by the city for fair housing programs have come from three sources. These figures show its magnitude. Through 1979 the city spent more than $400,000 on its housing program, an amount representing approximately 10 percent of the Community Development Block Grants it received. The 1978 budget appropriated $40,000 for fair housing, $25,000 for Heights Community Congress, and $115,920 for Real Estate Division, a total of $181,350 coming from the Community Development Block Grants. The Cleveland Foundation gave a grant of $25,650, and $33,545 came from the general fund. Other community development and general fund monies were expended on the Comprehensive Housing Program through the planning and development, financial, and law departments.

The actual proportion of local to federal funds expended for fair housing cannot be determined on the present record. While only general funds would represent monies raised by taxes, the expenditure of any other funds (federal or foundation) entrusted to the city to achieve and maintain open housing and to enforce fair housing laws represents economic injury, for standing purposes. Of course, the city seeks no damages, and thus the question of its right to recover any expended monies need not be considered.

Ms. Roderick explained, "by assuring them that all qualified buyers would have a chance to see their homes that were for sale." To accomplish this, it provides an information and escort service to prospective families, both black and white, "to assure that both black and white families had a chance to see all ten elementary school districts" and to "promote the benefits of living in [the Cleveland Heights] community." For the first two years, this escort service was performed by the Heights Community Congress under contract with the city. In 1976 the function was taken over by the Housing Service.

In April 1976 the Housing Service instituted the preferred agent program, thus described in a printed release of the city's Office of Real Estate Programs (Housing Service):

> As part of a comprehensive real estate program, the city of Cleveland Heights has established a preferred real estate sales agent list [PAL]. This list contains the names of sales agents who have successfully completed an extensive orientation and education program. They have demonstrated through their participation in this program their commitment to promote and maintain Cleveland Heights as an open, integrated, well-maintained residential community. Prospective home buyers and sellers are urged to utilize the services of these professionals to meet their housing needs.

Both in 1976 and in 1977 Heights Community Congress conducted audits for Cleveland Heights and compared the performance of PAL agents with non-PAL agents. As Ms. Roderick explained it, the purpose of these audits (paid for by Cleveland Heights) was to determine how well the orientation program did in educating the preferred agents and to see whether they were "doing better than non-preferred

agents in terms of the Fair Housing Law and in terms of their attitudes about Cleveland Heights."

From April 4 to April 17, 1978 Heights Community Congress and a consultant, pursuant to a Cleveland Heights contract, conducted a study (audit) "of the availability of housing within the community and other aspects of the housing delivery system within the community." Pursuant to the contract, the 1978 spring audit was designed as a replica of the HUD/NCDH [7] nationwide audit conducted in 1977, except that the audit involved only sales, no rentals; the time span was longer; and the sampling procedure was done locally instead of in Washington. The contract provided that the Heights Community Congress should be paid a sum not to exceed $9,500, and substantially that amount was paid by the city for the audit. Thirty-five different real estate firms were audited. Noting that the audit was a change in format from what had been done before, Ms. Roderick stated that "the intent of this survey was to understand real estate practices . . . the reason for doing the survey was not litigation." [8]

Under these circumstances and upon the entire discovery factual record, it is concluded that the monies expended by the city in conducting programs to achieve and maintain open (fair) housing and deemed essential to its survival, represent economic injury to the city. Treated separately from the economic injury considered in III A, it satisfies the Article III requirement that "the plaintiff must show that he personally had suffered some actual or threatened

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[7] National Committee against Discrimination in Housing (hereafter HUD audit).

[8] Another function of the housing office is related to the city's commercial properties. Ms. Roderick stated that "the city has had to make special efforts and assign specific staff people to work in that whole area of commercial reinvestment."

injury as a result of the putatively illegal conduct of the defendant." *Bellwood II, supra,* at 99.

IV.

A.

The standing of each of the individual plaintiffs will be judged by the court's decision on standing in *Bellwood II,* at parts IV and V. Of the six individual plaintiffs in *Bellwood II* (respondents in the Supreme Court), four white persons actually were "homeowners in the community against which petitioners alleged steering [had] been directed." They claimed that "the transformation of their neighborhood from an integrated to a predominantly Negro community [was] depriving them of the 'social and professional benefits of living in an integrated society'." *Bellwood II, supra,* at 111. Finding indistinguishable the Court's decision in *Trafficante,* in which a similar allegation was held to state a distinct and palpable injury, the Court declared:

> [F]or the purpose of standing analysis, we perceive no categorical distinction between injury from racial steering suffered by occupants of a large apartment complex and that imposed upon residents of a relatively compact neighborhood such as Bellwood [a 12 x 13 block area in a municipality of 20,000].

Id., at 114. As to the four individual respondents who lived in the target area, the Court found that "the facts alleged in the complaints and revealed by initial discovery [were] sufficient to provide standing under Article III." *Id.,* at 115.

On the record before it, the Court sustained summary judgment as to Perry, a black who lived in Bellwood but outside the "target neighborhood of Bellwood" and Sharp, a black who lived in Maywood. The Court further stated:

> Although we intimate no view as to whether persons residing outside of the target neighborhood have standing to sue under section 812 of Title VIII, we do not foreclose consideration of this question if, on remand, the District Court permits respondents Perry and Sharp to amend their complaints to include allegations of actual harm.

Id., at 113 n.25.

The Court's open-ended remand gave tentative effect to the summary judgment ruling. However, it seems unlikely that summary judgment as to Perry would have been sustained if the Court believed that actual harm attached to Perry because of his residence in Bellwood, derived vicariously from the harm allegedly "done to the residents of the carefully described neighborhood in Bellwood in which four of the individual respondents reside[d]." Thus, residence in Bellwood, without residence in the target neighborhood, was not enough to create a claim of deprivation of the "social and professional benefits of living in an integrated society."

In passing on the standing of each of the individual plaintiffs, the critical factor, therefore, will be whether the plaintiff is living in a neighborhood that is becoming a "predominantly Negro community." The absence of residence in such a community will deny the particular plaintiff the right to claim "the loss of social and professional benefits." Consideration would then be given to any claim of economic injury as a resident of Cleveland Heights, such as "relative diminution in value of the [plaintiff's] home." *Bellwood II, supra,* at 115.

B.

Sandra McGee and her husband and daughter moved to Cleveland Heights from Brookpark, Ohio. He was working

in the Ford Motor plant in Brookpark. They made the move because they thought

> [Cleveland Heights] offered a diverse and stable community, integrated you know, where there were blacks living in the community, and you know, there were whites and offered a diversification. We certainly weren't getting that in Brookpark.

The McGee's purchased a home on Berkeley in 1970. She says there are approximately 83 homes on Berkeley. Four were black at the time she moved in. She believes now that, conservatively, 73 of the 83 homes are black. Asked if she knew any of the white families that had moved out of the neighborhood, she said that she did. She knew them personally and very well. She knew some (six) socially. They were involved in a neighborhood association. White families have moved farther east "around Punderson, Chagrin Falls, that area, Hudson."

Asked if she had any objection to the apparent increase in the minority population, she answered:

> Yes, I feel that it has deprived me of some social, interracial associations and some economic benefits, and certainly some professional services.

Applying the standards on standing set forth in part III A, Sandra McGee's described losses of social and professional benefits through the transformation of her street depicts a distinct and palpable injury. She has standing to claim, as the testimony of witnesses Roderick and Robinson generally indicates, that racial steering contributed to by acts of the defendants has played a part in changing the composition of her neighborhood from integrated to predominantly black.

Any class that Sandra McGee might properly represent would not be city-wide as she seeks. At most, the class would be limited to those black citizens of Cleveland Heights that live in any area that is losing its integrated character and is becoming a predominantly black neighborhood. Howevere, [sic] any decision regarding class certification must await a hearing directed at such issue.

C.

Kenny Peterson and his wife Mary Jude purchased a home on Cummings Road in Cleveland Heights in 1977. Mr. Peterson states that his neighborhood (Cummings Road) has not changed appreciably since they moved in. It basically has the same number of blacks that it had in 1977. He has continued social relationships with blacks in his neighborhood. Residents in an apparently stable, integrated neighborhood, he and his wife could not and do not claim a loss of social benefits from interracial relationships. Thus he does not show the actual injury as defined by the *Bellwood* criteria of standing, part III A.

Mr. Peterson is concerned about the "disruptive effects that steering and racial isolation have caused within the community." When asked to indicate how the acts of Hilltop had affected him in the neighborhood of the Taylor Road school district, he answered:

> They have affected me in my neighborhood in as far as being a member of the neighborhood also makes me a member of Cleveland Heights and they have affected Cleveland Heights as a whole and therefore affected me and my neighborhood.

Since Mr. Peterson's own statements show that he has not lost the social benefits of interracial living in his own neighborhood, he is thereby insulated from claiming that

type of injury in some other neighborhood of Cleveland Heights. Thus, he cannot vicariously claim injury to another neighborhood by reason of his residence in Cleveland Heights. This constitutes no actual injury under section 812 and section 804 judged by the *Bellwood* criteria of standing.

On the same record, Mary Jude Peterson lacks standing. Her additional claim is that she has been deprived of social benefits of interracial association "as a member of the white class" but not personally. This is not sufficient to establish standing, *Simon* v. *Eastern Kentucky Welfare Rights Organization,* 426 U.S. 26, 40, n.20 (1976); *Warth* v. *Seldin,* 422 U.S. 490, 502 (1975).

Nor do the Petersons describe any economic injury which they are entitled to assert. Any expense in operating the Housing Service, as found, represents economic injury to the city. But derivatively, no taxpayer may assert such an economic injury.

Therefore, it is concluded that both Mr. and Mrs. Peterson lack standing to seek damages individually and as a representative of a white class of citizens of Cleveland Heights.

D.

Raymond Charles Hendricks and his wife reside on Tremont Road off Noble Road. They purchased the home in 1972. Mr. Hendricks believes that he has seen a figure of five percent minority population for "the general area." The approximate percentage of blacks in his census tract is 15 to 20 percent. Of the 11 homes on his street, three families are black and one is biracial. They have lived on the street four or five years. The change in racial composition of the neighborhood has not yet been enough to make the street predominantly Negro. Thus the condition that upheld

standing in *Bellwood*, with any resulting loss of social and professional benefits of interracial association, is not present.

Describing the injury which he felt he suffered from what he regarded as an act of racial steering, he stated:

> If that type of activity continues, I no longer live in a community which is open and integrated to people who, from their free choice, want to live here. Someone else is choosing the people who want to live in Cleveland Heights by showing them different locations.
>
> Q. And how does that injure you?
>
> A. It injures me because I've bought a home in a community that's open and integrated, and that's the way I wanted to buy a home and that's the kind of a community I want to continue to live in.

Under *Bellwood*, indirect victims entitled to claim actual injury under section 3612 would be those suffering loss of social and professional interracial benefits in any Bellwood-type target area of Cleveland Heights. The statute as written and construed, may not be stretched to grant standing to the class of indirect suitors who would base their claims solely on their residency in a city manipulated by racial steering or on any resulting shattering of a personal perception of continued life in a "community that's open and integrated."

Mr. Hendricks also speaks of injury "because of manipulation generally affecting my community, causing the community to spend hundreds of thousands of dollars in real estate programs, basically to combat manipulation." Thus he properly puts this in terms of cost to the city. He does not show how he personally has suffered economic injury or loss.

Hence it is concluded that on the undisputed record, Mr. Hendricks lacks standing to seek damages either individually or as a representative of a white class of citizens of Cleveland Heights.

E.

Lonnie Newsom, his wife and children resided at 2900 Edgehill Road, Cleveland Heights from 1972 until 1979 when they moved to Worthington, Ohio. In his block of Edgehill Road, there was one other black family. That same black family was there when he moved. The black population of the Coventry school district in which the Newsoms lived was estimated at about 17 percent.

Mr. Newsom was active in Coventry Neighbors and The Committee to Improve Community Relations, both groups that are connected with the Heights Community Congress. When asked about his injury, he answered:

> Economically, I would like to live in a place where I don't have to invest large amounts of my time trying to monitor real estate agencies, large amounts of my time being involved in community relations activities at the schools, large amounts of my time and money not being devoted to, you know, trying to reintegrate the school system.

Voluntary expenditures of time and energy, even personal funds, to advance these causes, however worthy, "constitutes an abstract injury, not judicially cognizable in the assessment of plaintiff's standing." *Mulqueeny* v. *National Commission on the Observance of International Women's Year, 1975,* 549 F.2d 1115, 1121 (7th Cir. 1977).

Upon the undisputed record and the principles previously stated in part IV A, B, C, and D, it is concluded that Mr. Newsom lacks standing to seek damages. No longer a resi-

dent of Cleveland Heights, he could not properly or adequately represent any class of black citizens of Cleveland Heights.

F.

Plaintiff Sara Louisa Taylor, her husband Philip and her two children have lived at 2894 Meadowbrook Road, Cleveland Heights, since 1969. Mrs. Taylor's testimony does not indicate the racial composition of her neighborhood. However, she resides in census tract 1414, which had an estimated eight percent non-white population in 1977 and an estimated 14 percent non-white population in 1978.

Applying the principles set forth in part IV A, B, C, D, and E, it is concluded on the undisputed record that plaintiff Taylor lacks standing to seek damages both individually or as a representative of a white class of citizens of Cleveland Heights.

V.

Defendants finally challenge the standing of plaintiff Heights Community Congress, a not-for-profit Ohio corporation. In the complaint it is alleged that HCC "has as its primary objective to promote and to maintain Cleveland Heights as an open and integrated community." It is further alleged in part:

> Plaintiff HCC has over 200 component organizations representing over 58,000 residents of Cleveland Heights and has undertaken specific activities to achieve, promote and maintain its community as balanced and integrated including the monitoring of real estate practices of the defendant and of other real estate firms, providing technical guidance to the defendant and other real estate firms, educating the community at large, the defendant and other real estate firms about fair housing,

> working with local government to provide inducements to real estate firms including the defendant to practice fair housing and engage in a comprehensive effort to maintain balanced and integrated housing and educational opportunities.

Asked in interrogatory No. 12A to state any injuries it suffered, HCC answered that it has expended funds for the purpose of promoting and maintaining an open and integrated community. Defendants argue that this statement fails to show any concrete injury to HCC of the type required to provide standing under Article III. Defendants cite *Bellwood I*, in which the Seventh Circuit Court of Appeals affirmed the dismissal of plaintiff Leadership Council for Metropolitan Open Communities. In part, the court there stated:

> The sole allegations are that racial steering interferes with the Council's mission and costs it funds to attack. But the Council's interest in open housing matters and its asserted commitment to effectuating that interest, albeit commendable, do not substitute for the concrete injury constitutionally required to invoke the jurisdiction of the federal courts. *See Simon, supra,* 426 U.S. at 39-40, 96 S.Ct. 1917; *Warth, supra,* 422 U.S. at 511-17, 95 S.Ct. 2197; *Sierra Club* v. *Morton,* 405 U.S. 727, 739-40, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972); *Mulqueeny* v. *National Commission on the Observance of International Women's Year, 1975,* 549 F.2d 1115, 1120-22 (7th Cir. 1977). The alleged dollar cost to the Council of attacking defendants' alleged practices is simply "concomitant to [its] keen concern" about open housing issues, and does not present independently cognizable injury.

Id., at 1121.

The Leadership Council is "involved in various fair

housing activities through [sic] the greater Chicago area and elsewhere" (affidavit of Executive Director Kale Williams). In contrast, it is alleged, and the record shows, that the HCC has the primary objective of promoting and maintaining *Cleveland Heights* "as an open and integrated community." This geographical difference does not distinguish the authority of *Bellwood* I and its quoted language. But the record here requires a different result because of the relationship between the City of Cleveland Heights and the Heights Community Congress in seeking to make and maintain the city "open and integrated" and the nexus between their joint efforts and the activities of the defendants that are the subject of this action.

The HCC has nine classes of membership, the first of which, governmental, includes a member appointed by the City Manager of Cleveland Heights. The other classes are community-wide, *e.g.*, school board, library, religious groupings, business, and merchants. In addition, neighborhood organizations are members of the HCC. While the HCC works in every area of community life, the record has emphasized its fair housing programs.

Two major programs of the HCC, conducted through its volunteers, have been the periodic New Homebuyer Questionnaire and various audits of realty companies and agents. Data collected in the questionnaires include race of buyers; community origin of buyer; stated preference, if any, of integrated area; stated preference, if any, of Cleveland Heights, etc. By September 1977 the HCC had conducted five audits of fair housing practices in Cleveland Heights. The 1977 audit began in April and continued through December.

A portent of things to come was articulated in a February 1978 letter of the HCC Open Housing Task Force to each participating checker summarizing the April-Decem-

ber 1977 audit. After noting that "this important monitoring tool was made possible with a substantial effort of many black and white volunteers," the Task Force itemized results of the audit. The letter then stated:

> Steering, the collective effect of [the itemized] practices, has been hard on this community. Some neighborhoods are showing trends toward resegregation, while communities to the east remain all white.

In April 1978 HCC performed for Cleveland Heights a replica of the nationwide HUD 1977 audit. This was the largest of the audits yet performed in Cleveland Heights. The June report of the consultant, Dr. Julie Saltman, concluded in part,

> It is apparent from the results of this 1978 Audit that racial discrimination in housing is a pervasive and crucial problem in the Cleveland Heights area.

It is clear that the results of the spring 1978 audit, perhaps supplemented by the HCC's fall audit of four companies, led to the decision of HCC and eventually the city to bring this action. Informative as to the state of integration in Cleveland Heights two months before the suit was filed is the following quotation from the memorandum of January 9, 1979 from Gay Quereau to the Open Housing Task Force as to its future direction. Item 3 began:

> Consider undertaking a formal six-month study on affirmative marketing (a program to encourage whites to buy in Cleveland Heights and other integrated areas while encouraging blacks to consider non-integrated areas).

This review of the record helps to understand HCC's assertion of an economic injury. It does show that despite

the expenditure of funds (largely HCC staff salaries) in initiating and carrying on the fair housing programs, unfair housing practices have persisted. The 1977 audit reported, "Steering . . . has been hard on this community. Some neighborhoods are showing trends toward resegregation." The spring 1978 large scale audit revealed that "racial discrimination in housing is a pervasive and crucial problem in the Cleveland Heights area."

Given other evidence that tends to connect the locational steering, at least in part to the defendants, the actual injury caused to plaintiff HCC by locational steering by race is interference with and frustration of its fair housing programs. That injury is made concrete and quantified by the funds expended by HCC in carrying out those programs.[9] HCC's expenditure of funds is more than "concomitant to [the] keen concern," *Mulqueeny v. National Commission on the Observance of International Women's Year, 1975, supra,* at 1121, of the staff, members, and supporters of the goals of HCC. The funds expended by the HCC represent a direct injury to the organization itself.

The words of *Coles v. Havens Realty Corp.*, No. 78-422 (4th Cir. Sept. 18, 1980), are particularly applicable:

> Although HOME's goals cannot be equated with bricks and mortar, they are functional, requiring identifiable action and the expenditure of effort and funds which may result in success or failure in achieving its objectives. Its "projects" therefore "provides that 'essential dimension of specificity' that informs judical decision making," as described in *Arlington Heights,* [*Vil-*

[9] Lana Cowles similarly defined HCC's economic injury:

A. The injury is the injury that is incurred by virtue of the fact that the Heights Community Congress, the goal of the Heights Community Congress has been interfered with. The Heights Community Congress continues to expend money for programs to counteract the effects of discriminatory real estate practices.

lage of Arlington Heights v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977)].

This court declines to follow *Bellwood I*, as quoted at p. 30, *supra*. Instead, accepting *Coles*, this court finds that HCC has organizational standing. HCC may press a monetary claim to the extent of funds expended as a result of defendants' practices, and it may also join the city in its request for injunctive relief. However, insofar as HCC seeks to represent its members in bringing any monetary claims, the request is denied.

VI.

In the nature of a postscript, it should be understood that no factual issues have been resolved on the merits by any reference in the opinion to the factual record developed on discovery. Final resolution of the factual and legal claims of the plaintiffs who remain in the lawsuit must await trial on the merits.

What is now resolved is the multi-branched defendants' motion for summary judgment on the issue of standing. The motion is denied as to the city of Cleveland Heights, Heights Community Congress, and individual plaintiff Sandra McGee. The motion is granted as to individual plaintiffs Kenny and Mary Jude Peterson, Raymond Charles Hendricks, Lonnie Newsom, and Sara Louisa Taylor.

IT IS SO ORDERED.

WILLIAM K. THOMAS
U. S. District Judge